

ESTTA Tracking number: **ESTTA356860**

Filing date: **07/08/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Athletics Investment Group LLC d/b/a The Oakland Athletics Baseball Company |
| Granted to Date of previous extension | 07/18/2010 |
| Address | 7000 Coliseum Way, Second Floor Oakland, CA 94621 UNITED STATES |

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| Attorney information | Jill K. Tomlinson Cowan, Liebowitz and Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES jkt@cll.com, trademark@cll.com Phone:212-790-9200 |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 77675805 | Publication date | 01/19/2010 |
| Opposition Filing Date | 07/08/2010 | Opposition Period Ends | 07/18/2010 |
| Applicant | AthletixNation, Inc. 8527 Bluejacket Lenexa, KS 662141656 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 038. First Use: 2008/06/10 First Use In Commerce: 2008/06/10 All goods and services in the class are opposed, namely: Broadcasting of video and audio content and programming via a global communications network |
| Class 045. First Use: 2008/06/10 First Use In Commerce: 2008/06/10 All goods and services in the class are opposed, namely: Online social networking services |

Grounds for Opposition

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|-------|-------------------------------|
| Other | Please see attached pleading. |
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| Attachments | 1180681_3.pdf (5 pages)(45432 bytes) 1181941_1.pdf (1 page)(46616 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

| | |
|-----------|---------------------|
| Signature | /Jill K. Tomlinson/ |
| Name | Jill K. Tomlinson |
| Date | 07/08/2010 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 77/675,805
Filed: February 23, 2009
For Mark: ATHLETIXNATION (and Design)
Published in the Official Gazette: January 19, 2010

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| -----X | |
| ATHLETICS INVESTMENT GROUP LLC D/B/A | : |
| THE OAKLAND ATHLETICS BASEBALL | : |
| COMPANY, | : |
| | : |
| Opposer, | : |
| | : |
| v. | : |
| | : |
| ATHLETIXNATION, INC., | : |
| | : |
| Applicant. | : |
| -----X | |

Opposition No.

NOTICE OF OPPOSITION

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Athletics Investment Group LLC d/b/a The Oakland Athletics Baseball Company (“Opposer”), a California limited liability company located at 7000 Coliseum Way, Second Floor, Oakland, California 94621, believes that it will be damaged by registration of the ATHLETIXNATION (and Design) mark shown below:



(“Applicant’s ATHLETIXNATION and Design Mark”) in International Class 38 for “Broadcasting of video and audio content and programming via a global communications network” and Class 45 “online social networking services” as shown in Application Serial No.

77/675,805 (the “Application”), and having been granted extensions of time to oppose up to and including July 18, 2010, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned OAKLAND ATHLETICS Major League Baseball club.
2. Since long prior to June 10, 2008, Applicant’s claimed first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used the name or mark ATHLETICS, alone or with other word, letter and/or design elements (the “Opposer’s ATHLETICS Marks”), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, broadcasting of video and audio content and programming via a global communications network via the Internet and mobile media, online social networking services, clothing, sporting goods and toys.
3. Opposer owns U.S. federal applications for Opposer’s ATHLETICS Marks in International Classes 6, 9, 14, 16, 18, 20, 21, 24, 25, 28 and 41; namely, Registration Nos. 1,263,825; 1,267,687; 1,530,675; 1,530,851; 1,560,962; 2,573,396; 2,630,348; 2,759,932; 3,349,789; 3,538,727; 3,633,242 and 3,633,243. Registration Nos. 1,263,825; 1,267,687; 1,530,675; 1,530,851 and 1,560,962 are incontestable.
4. Since long prior to June 10, 2008, Applicant’s claimed first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer’s Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, broadcasting of video and audio content and programming via a global communications network via the Internet and

mobile media, online social networking services, clothing, sporting goods and toys, and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposer's ATHLETICS Marks, Opposer has built up highly valuable goodwill in Opposer's ATHLETICS Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On February 23, 2009, Applicant filed the Application for Applicant's ATHLETIXNATION and Design Mark in International Class 38 for "Broadcasting of video and audio content and programming via a global communications network" and in International Class 45 for "online social networking services" claiming a first use date of June 10, 2008.

7. Upon information and belief, Applicant did not use Applicant's ATHLETIXNATION and Design Mark for the services covered in the Application in United States commerce prior to its claimed first use date of June 10, 2008.

8. The services covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with Opposer's ATHLETICS Marks.

9. Applicant's ATHLETIXNATION and Design Mark so resembles Opposer's ATHLETICS Marks as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's ATHLETIXNATION and Design Mark.

10. It is typical for sports fans, including without limitation, baseball and, in particular, Major League Baseball fans to combine the term “nation” with the name of a particular team to refer to the fans of that team as a cohesive whole, for example, RED SOX NATION and CARDINALS NATION. Thus, consumers would be likely to associate a homophonic version of Opposer’s ATHLETICS marks combined with the term “nation,” such as Applicant’s ATHLETIXNATION and Design Mark. Opposer would be further injured by the granting of a certificate of registration to Applicant which has no connection with or authorization from Opposer because Applicant’s ATHLETIXNATION and Design Mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s ATHLETIXNATION and Design Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Jill K. Tomlinson (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
July 8, 2010

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Jill K. Tomlinson/

Mary L. Kevlin
Richard S. Mandel
Jill K. Tomlinson
1133 Avenue of the Americas
New York, New York 10036
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 8, 2010, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Timothy D. Steffens, Esq., Polsinelli Shugart P.C., 700 West 47th Street, Suite 1000, Kansas City, MO 64112-1805.

/Jill K. Tomlinson/
Jill K. Tomlinson

Cowan, Liebowitz & Latman, P.C.

LAW OFFICES

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July 8, 2010

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Athletics Investment Group LLC d/b/a The Oakland Athletics
Baseball Company
Notice of Opposition Against
Athletixnation, Inc.
Application to register ATHLETIXNATION (and Design)
Ref. No. 21307.034

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/765,805 published in the Official Gazette on January 19, 2010. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$600 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Jill K. Tomlinson/
Jill K. Tomlinson

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)